

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James F. Holderman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 5603	DATE	August 12, 2009
CASE TITLE	Robinson vs. McNeil Consumer Healthcare, et al.		

DOCKET ENTRY TEXT

Plaintiffs' Motion to Exclude the Expert Testimony of Dr. Paul Waymack [192] is granted.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

Dr. Waymack's opinion as an expert regarding FDA regulations and McNeil's compliance therewith is inconsistent with United States Supreme Court precedent issued after Dr. Waymack's report and could not be considered therein. Dr. Waymack's failure to have considered that precedent and amend his report by the time of his deposition two weeks after the opinion in *Wyeth v. Levine*, 129 S. Ct. 1187 (2009), demonstrates a lack of diligence and lack of reliability that causes this court to question Dr. Waymack's opinions in all areas of his testimony. The defense has not shown that Dr. Waymack's testimony (1) has properly considered sufficient facts or data; (2) is the product of reliable principles and methods; and (3) has applied principles and methods reliably to the facts of this case. Fed. Rule Evid. 702. I find that Dr. Waymack's testimony would mislead the jury and therefore fails to comply with the enumerated subsections of Rule 702 of the Federal Rules of Evidence. As such it should not be allowed to be presented at the trial under Rules 702 and 403 of the Federal Rules of Evidence.

Courtroom Deputy
Initials:

AMM